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IN THE
Supreme Court of the United States

KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, et al.,
Petitioners,
v.
HOBBY LOBBY STORES, INC., et al.,
Respondents.

CONESTOGA WOOD SPECIALTIES CORPORATION, et al.,
Petitioners,
v.
KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, et al.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Tenth and Third Circuits

BRIEF FOR THE NATIONAL WOMEN'S LAW CENTER AND SIXTY-EIGHT OTHER ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF THE GOVERNMENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

STATEMENT OF INTERESTS OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 1

ARGUMENT 5

I. THE LEGISLATIVE HISTORY OF THE ACA DEMONSTRATES THAT THE CONTRACEPTION REGULATIONS WERE ENACTED TO FURTHER COMPELLING GOVERNMENTAL INTERESTS 5

II. THE CONTRACEPTION REGULATIONS FURTHER COMPELLING GOVERNMENTAL INTERESTS 11

A. Safeguarding Public Health Is a Compelling Governmental Interest 11

1. Unintended Pregnancies Are Highly Prevalent in the United States and Have Serious Health Consequences for Women and Children 11

2. Providing Access to the Full Range of FDA-Approved Contraceptive Methods Without Cost-Sharing Forwards Women's Health 14

B. The Contraception Regulations Forward the Compelling Governmental Interest of Promoting Gender Equality 18

TABLE OF CONTENTS—Continued

Page

1. Promoting Gender Equality, Including Equal Access to Health Care, Is a Compelling Governmental Interest 19
2. Excluding Health Insurance Coverage for Contraception Discriminates Against Women 20
3. Women's Disproportionate Share of Health Care Costs, Including the Cost of Contraceptives, Harms Women's Health and Economic Status 21
4. Promoting Women's Access to Contraception Leads to Greater Social and Economic Opportunities for Women 24

III. THE RIGHTS AND INTERESTS OF THE EMPLOYEES AND DEPENDENTS COVERED BY THE CONTRACEPTION REGULATIONS BEAR HEAVILY ON THE COMPANIES' RFRA CLAIMS 26

IV. THAT THE GOVERNMENT PROVIDES FOR CERTAIN EXEMPTIONS DOES NOT NEGATE THE COMPELLING GOVERNMENTAL INTERESTS FORWARDED BY THE REGULATIONS 32

CONCLUSION 37

TABLE OF CONTENTS—Continued

APPENDIX Page

APPENDIX: List of *Amici* Parties 1a

TABLE OF AUTHORITIES

CASES Page(s)

Bd. of Dirs. of Rotary Int'l v. *Rotary Club of Duarte*,
481 U.S. 537 (1987) 19

Bob Jones Univ. v. *United States*,
461 U.S. 574 (1983) 28, 30

Bowen v. *Roy*,
476 U.S. 693 (1986) 28

Buchwald v. *Univ. of N.M. Sch. of Med.*,
159 F.3d 487 (10th Cir. 1998) 11

Catholic Charities of Sacramento Inc. v. *Super. Ct. of Sacramento Cnty.*,
85 P.3d 67 (Cal. 2004) 19, 31, 34

Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. *Amos*,
483 U.S. 327 (1987) 34

Cutter v. *Wilkinson*,
544 U.S. 709 (2005) 30

Employment Div., Dep't of Human Res. v. *Smith*,
494 U.S. 872 (1990) 2, 27

Equal Emp't Opportunity Comm'n v. *Fremont Christian Sch.*,
781 F.2d 1362 (9th Cir. 1986) 35

Equal Emp't Opportunity Comm'n v. *Pac. Press Pub. Ass'n*,
676 F.2d 1272 (9th Cir. 1982) 35

Erickson v. *Bartell Drug Co.*,
141 F. Supp. 2d 1266 (W.D. Wash. 2001) 20

TABLE OF AUTHORITIES—Continued

Page(s)

Estate of Thornton v. *Caldor*,
472 U.S. 703 (1984) 30

Gilardi v. *U.S. Dep't of Health & Human Servs.*,
733 F.3d 1208 (D.C. Cir. 2013) 28, 32, 34

Hernandez v. *Comm'r*,
490 U.S. 680 (1989) 28

Hobby Lobby Stores, Inc. v. *Sebelius*,
723 F.3d 1114 (10th Cir. 2013),
cert. granted 134 S. Ct. 678 (2013) 27

In re Union Pac. R.R. Emp't Practices Litig.,
479 F.3d 936 (8th Cir. 2007) 21

Korte v. *Sebelius*,
735 F.3d 654 (7th Cir. 2013) 31, 33, 34

Lumpkin v. *Brown*,
109 F.3d 1498 (9th Cir. 1997) 35

Lyng v. *Nw. Indian Cemetery Protective Assoc.*,
485 U.S. 439 (1988) 28

Mauldin v. *Wal-Mart Stores, Inc.*,
No. 01-cv-2755, 2002 WL 2022334
(N.D. Ga. Aug. 23, 2002) 21

Mead v. *Holder*,
766 F. Supp. 2d 16 (D.D.C. 2011) 11

Nat'l Labor Relations Bd. v. *Catholic Bishop of Chicago*,
440 U.S. 490 (1979) 34

TABLE OF AUTHORITIES—Continued

Page(s)

Planned Parenthood of Se. Pa. v. *Casey*,
505 U.S. 833 (1992) 24

Prince v. *Massachusetts*,
321 U.S. 158 (1944) 29

Roberts v. *U.S. Jaycees*,
468 U.S. 609 (1984) 19

S. Ridge Baptist Church v. *Indus. Comm'n of Ohio*,
911 F.2d 1203 (6th Cir. 1990) 34, 36

Sherbert v. *Verner*,
374 U.S. 398 (1963) 28

Tony and Susan Alamo Found. v. *Dep't of Labor*,
471 U.S. 290 (1985) 29

W. Va. State Bd. of Educ. v. *Barnette*,
319 U.S. 624 (1943) 28

Wisconsin v. *Yoder*,
406 U.S. 205 (1972) 29

United States v. *Lee*,
455 U.S. 252 (1982) ..... *passim*

United States v. *Virginia*,
518 U.S. 515 (1996) 19

CONSTITUTION

U.S. Const. amend. I 2

STATUTES

20 U.S.C. § 1681 35

26 U.S.C. § 4980H 32

TABLE OF AUTHORITIES—Continued

Page(s)

29 U.S.C. § 2611 35

42 U.S.C. § 300gg-13 ..... 2, 5, 8

42 U.S.C. § 12111 35

42 U.S.C. § 2000bb-1 2

42 U.S.C. § 2000e 35

42 U.S.C. § 18011 33

REGULATIONS

45 C.F.R. § 147.130 34

45 C.F.R. § 147.140 33

77 Fed. Reg. 8,725 (Feb. 15, 2012) 2, 10

78 Fed. Reg. 8,456 (Feb. 6, 2013) 34

LEGISLATIVE AND STATE MATERIALS

51 Mont. Op. Att'y Gen. 16
(Mar. 28, 2006) 21

155 Cong. Rec. S11,985
(daily ed. Nov. 30, 2009) 6

155 Cong. Rec. S12,021
(daily ed. Dec. 1, 2009) 5, 6, 7

155 Cong. Rec. S12,033
(daily ed. Dec. 1, 2009) 7, 26

155 Cong. Rec. S12,106
(daily ed. Dec. 2, 2009) 7-8

155 Cong. Rec. S12,265
(daily ed. Dec. 3, 2009) 6, 8

H.R. 3590, § 2713(a),
111th Cong. (Nov. 19, 2009) 5

TABLE OF AUTHORITIES—Continued

Page(s)

S. Rep. No. 103-111, *reprinted in* 1993 U.S.C.C.A.N. 1892 ..... 27, 31

Mich. Civil Rights Comm'n, *Declaratory Ruling on Contraceptive Equity* (Aug. 21, 2006) 21

Office of the Wisc. Att'y Gen., OAG-1-04, 2004 WL 3078999 (Aug. 16, 2004) 21

OTHER AUTHORITIES

Bailey et al., *The Opt-In Revolution? Contraception and the Gender Gap in Wages* (Nat'l Bureau of Econ. Research, Working Paper No. 17922, 2012), *available at* http://www-personal.umich.edu/~baileymj/Opt_In_Revolution.pdf..... 25

Ctr. for Prevention and Health Servs., Nat'l Bus. Grp. on Health, *Investing in Maternal and Child Health* (2007), *available at* https://www.businessgrouphealth.org/pub/f3004374-2354-d714-5186-b5bc1885758a..... 17

Ctrs. for Disease Control & Prevention, *Ten Great Public Health Achievements–United States, 1900-1999*, 48 MORBIDITY & MORTALITY WKLY. REP. 241 (1999), *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/00056796.htm..... 14, 24

TABLE OF AUTHORITIES—Continued

Page(s)

DeNavas-Walt et al., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2011 (2012), *available at* http://www.census.gov/prod/2012pubs/p60-243. pdf 22

Dusetzina et al., *Cost of Contraceptive Methods to Privately Insured Women in the United States*, WOMEN'S HEALTH ISSUES 23-2 (2013) 16

Equal Emp't Opportunity Comm'n, Decision on Coverage of Contraception (Dec. 14, 2000) 9, 20

Finer & Zolna, *Unintended Pregnancy in the United States: Incidence and Disparities, 2006*, 84 CONTRACEPTION 478 (2011) 11-12

Frost & Lindberg, GUTTMACHER INST., REASONS FOR USING CONTRACEPTION: PERSPECTIVES OF U.S. WOMEN SEEKING CARE AT SPECIALIZED FAMILY PLANNING CLINICS (2012), *available at* http://www.guttmacher.org/pubs/journals/j.contraception.2012.08.012.pdf 24, 25

Gold, *The Need for and Cost of Mandating Private Insurance Coverage of Contraception*, GUTTMACHER REP. ON PUB. POL'Y, Aug. 1998 ..... 17, 22

TABLE OF AUTHORITIES—Continued

Page(s)

Goldin & Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. POL. ECON. 730 (2002) 26

Guttmacher Inst., A REAL-TIME LOOK AT THE IMPACT OF THE RECESSION ON WOMEN'S FAMILY PLANNING AND PREGNANCY DECISIONS (2009), *available at* http://www.guttmacher.org/pubs/RecessionFP.pdf 16

Health Res. & Servs. Admin., U.S. Dep't of Health & Human Servs., *Women's Preventive Services Guidelines*, http://www.hrsa.gov/womensguidelines (last visited Jan. 21, 2014) 1, 10

Inst. of Med., *About the IOM*, http://www.iom.edu/About-IOM.aspx (last visited Jan. 21, 2014) 8

Inst. of Med., CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS (2011), *available at* http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx ..... *passim*

Kaiser Family Found., *Employer Health Benefits 2013 Annual Survey: Grandfathered Health Plans*, *available at* http://kaiserfamilyfoundation.files.wordpress.com/2013/08/8465-employer-health-benefits-20132.pdf 33

TABLE OF AUTHORITIES—Continued

Page(s)

Logan et al., *The Consequences Of Unintended Childbearing: A White Paper* (Child Trends, Inc., 2007), *available at* http://www.thenationalcampaign.org/resources/pdf/consequences.pdf. 14

Mikulski Amendment Improves Coverage of Women's Preventive Health Services and Lowers Costs to Women, available at http://www.mikulski.senate.gov/_pdfs/Press/MikulskiAmendmentSummary.pdf 6

The Nat'l Campaign to Prevent Teen and Unplanned Pregnancy, *Getting the Facts Straight on the Benefits of Birth Control in America: Summary* (Nov. 2013), *available at* http://www.thenationalcampaign.org/resources/pdf/briefly-facts-straight.pdf..... 25

Nat'l Women's Law Ctr., FAQ ABOUT THE WAGE GAP (2013), *available at* http://www.nwlc.org/sites/default/files/pdfs/wage_gap_faqs_sept_2013.pdf..... 22

Nat'l Women's Law Ctr., INSECURE AND UNEQUAL: POVERTY AND INCOME AMONG WOMEN AND FAMILIES 2000-2011 (2012), *available at* http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_povertyreport.pdf..... 22-23

TABLE OF AUTHORITIES—Continued

Page(s)

Peipert et al., *Preventing Unintended Pregnancies by Providing No-Cost Contraception*, 120 OBSTETRICS & GYNECOLOGY 1291 (2012) 15, 17

Planned Parenthood Federation of America, IUD, http://www.plannedparenthood.org/health-topics/birth-control/iud-4245.htm (last visited Jan. 21, 2014) 15

Postlethwaite et al., *A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change*, 76 CONTRACEPTION 360 (2007) 17

Rustgi et al., *Women at Risk: Why Many Women are Forgoing Needed Health Care*, ISSUE BRIEF, (The Commonwealth Fund), May 2009, *available at* http://www.commonwealthfund.org/~/media/Files/Publications/Issue%20Brief/2009/May/Women%20at%20Risk/PDF_1262_Rustgi_women_at_risk_issue_brief_Final.pdf 23

Skopec & Sommers, U.S. DEP'T OF HEALTH & HUMAN SERVS., SEVENTY-ONE MILLION ADDITIONAL AMERICANS ARE RECEIVING PREVENTIVE SERVICES COVERAGE WITHOUT COST-SHARING UNDER THE AFFORDABLE CARE ACT (2013), *available at* http://aspe.hhs.gov/health/reports/2013/PreventiveServices/ib_prevention.cfm 36

TABLE OF AUTHORITIES—Continued

Page(s)

Sonfield, *Popularity Disparity: Attitudes About the IUD in Europe and the United States*, GUTTMACHER POL'Y REV., Fall 2007 ..... 12, 15

Sonfield, *What Women Already Know: Documenting the Social and Economic Benefits of Family Planning*, GUTTMACHER POL'Y REV., Winter 2013 ..... 18, 26

Trussell et al., *Erratum to "Cost Effectiveness of Contraceptives in the United States,"* 80 CONTRACEPTION 229 (2009) 16

Trussell & Wynn, *Reducing Unintended Pregnancy in the United States*, 77 CONTRACEPTION 1 (2008) 12

U.S. Dep't of Health & Human Servs., *Healthy People 2020: Family Planning*, http://healthypeople.gov/2020/topics objectives2020/overview.aspx?topicId=13 (last visited Jan. 21, 2014) 12, 13

U.S. Dep't of Health, Education, and Welfare, *Handbook of Public Assistance Administration*, Supplement D (June 17, 1966) 9, 10

Women's Research And Educ. Inst., WOMEN'S HEALTH INSURANCE COSTS AND EXPERIENCES (1994) 22

STATEMENT OF INTERESTS OF *AMICI CURIAE*

Amici curiae are the National Women's Law Center and sixty-eight other national, regional, and state organizations committed to protecting and advancing women's health and promoting equal opportunity, with a particular interest in ensuring that women receive the full benefits of access to contraceptive coverage without cost-sharing as intended by the Affordable Care Act. A list of the *amici* parties is set forth in the Appendix to this brief.

SUMMARY OF ARGUMENT

Contraceptives are a key component of preventive health care for women. To further the goals of bettering the health and welfare of all Americans, the Patient Protection and Affordable Care Act ("ACA") and implementing regulations require all new insurance plans to cover "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity" without cost-sharing requirements (the "contraception regulations"). Health Res. & Servs. Admin., U.S. Dep't of Health & Human Servs., *Women's Preventive Services Guidelines*, http://www.hrsa.gov/womensguidelines ("HRSA Guidelines") (last visited Jan. 21, 2014), *implemented*

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. All parties consented to the filing of this brief.

by 77 Fed. Reg. 8,725 (Feb. 15, 2012); 42 U.S.C. § 300gg-13(a)(4).

Hobby Lobby Stores, Inc. ("Hobby Lobby"), Conestoga Wood Specialties Corp. ("Conestoga Wood" and together with Hobby Lobby, the "Companies"), and their respective shareholders challenge the contraception regulations under the Religious Freedom Restoration Act ("RFRA"), which provides that the Government shall not "substantially burden a person's exercise of religion" unless the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1.[2] The Companies claim that providing insurance that includes coverage of certain contraceptive methods, including intrauterine devices ("IUDs") and emergency contraceptives, violates rights they allege are protected by RFRA.

If this Court reaches the merits of the Companies' claims,[3] it should find that they fail. As set out by the United States, the contraception regulations pose no substantial burden on the Companies' religious

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[2] The Companies also assert a violation under the Free Exercise Clause of the First Amendment, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. This claim also fails because the contraception regulations are neutral regulations of general applicability. *See Employment Div., Dep't of Human Res. of Or.* v. *Smith*, 494 U.S. 872, 879 (1990). Indeed, as this brief demonstrates, the contraception regulations meet RFRA's more demanding standard; thus, the requirement also satisfies the less stringent standard under the First Amendment.

[3] This brief does not address the threshold question of whether for-profit companies are protected by RFRA. This does not mean that *amici* concede the point.

exercise. Moreover, as *amici* demonstrate below, the regulations directly further at least two compelling governmental interests: promoting public health and equality for women.

First, contraception is critical to women's health, and providing it with no cost-sharing advances the compelling governmental interest in public health. Contraception is highly effective at reducing unintended pregnancy, which, as countless studies have shown and experts agree, can have severe negative health consequences for both women and children. Yet, prior to the contraception regulations, the high costs of contraception affected whether women used contraceptives consistently and whether women used the most appropriate and effective forms of contraception for their circumstances.

Second, by addressing gender gaps in health insurance and remedying the sex disparities inherent in failing to provide health insurance coverage for contraception and related services, the contraception regulations advance the compelling governmental interest in ending gender discrimination and promoting gender equality. Indeed, in passing the ACA, Congress recognized that excluding coverage of women's preventive health services, including contraception, constituted discrimination against women. Providing contraceptive coverage without cost-sharing corrects gender gaps in the provision of health care by ensuring that women, like men, can meet their basic preventive health care needs. Before the ACA went into effect, women disproportionately bore the costs of reproductive health care, and these high costs negatively affected women's health and well-being, as women often lacked access to or forewent necessary health care to keep costs down.

The contraception regulations address this disparity and advance equal opportunity in other aspects of women's lives, thus improving women's social and economic outcomes more generally.

In these cases, precisely because the contraception regulations forward these compelling interests, the Companies' attempt to exempt themselves from the regulations threatens real harm to their employees and employees' dependents. This harm to the rights and interests of third parties must bear heavily in the analysis of the Companies' claims, as the precedents of this Court make clear that neither the Constitution nor RFRA empowers individuals to exercise their own religious beliefs to the detriment of others. Because the regulations are narrowly drawn to forward compelling interests and because allowing the Companies to abrogate their employees' rights to this coverage would harm third parties, the Companies' claims must fail.[4]

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[4] In addition, the contraception regulations are the least restrictive means of furthering the compelling interests. By guaranteeing women access to contraception without cost-sharing within the existing framework of employer-provided health insurance plans, the regulations present the only seamless, efficient, and thorough means of ensuring women access to the full range of FDA-approved contraceptive methods, thereby advancing the government's compelling interests. Requiring women to go outside of the existing framework to access this and only this form of preventive care would accomplish the very opposite of what Congress intended.

ARGUMENT

I. THE LEGISLATIVE HISTORY OF THE ACA DEMONSTRATES THAT THE CONTRACEPTION REGULATIONS WERE ENACTED TO FURTHER COMPELLING GOVERNMENTAL INTERESTS.

A key component of the ACA is the preventive health services coverage provision, which is designed to enable individuals to avoid preventable conditions and improve health overall by increasing access to preventive care and screenings. *See* Inst. of Med., CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS, at 16-18, 168 (2011), *available at* http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx ("IOM REP."). This provision requires new health insurance plans to provide coverage for certain preventive services with no cost-sharing component. 42 U.S.C. § 300gg-13(a).

The bill as originally introduced in the Senate provided coverage for: (1) items or services recommended by the U.S. Preventive Services Task Force ("USPSTF"); (2) immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; and (3) with respect to children, preventive care and screenings recommended by the Health Resources and Services Administration ("HRSA"). *See* H.R. 3590, § 2713(a), 111th Cong. (as of Nov. 19, 2009). The USPSTF recommendations, however, "d[id] not include certain recommendations that many women's health advocates and medical professionals believe are critically important." 155 Cong. Rec. S12,021, S12,025 (daily ed. Dec. 1, 2009) (statement of Sen. Boxer).

Recognizing this limitation for what it was—a significant gap in coverage that threatened women's health and discriminated against women—Senator Mikulski sponsored the Women's Health Amendment to ensure "essential protection for women's access to preventive health care not currently covered in other prevention sections of the [ACA]." *Mikulski Amendment Improves Coverage of Women's Preventive Health Services and Lowers Costs to Women, available at* http://www.mikulski.senate.gov/_pdfs/Press/MikulskiAmendmentSummary.pdf.

In relevant part, the Amendment proposed a fourth category of preventive coverage:

> (4) with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.

155 Cong. Rec. S11,985, S11,986 (daily ed. Nov. 30, 2009) (Amend. No. 2791). The Amendment "require[d] coverage of women's preventive services developed by women's health experts to meet the unique needs of women." 155 Cong. Rec. S12,265, S12,273 (daily ed. Dec. 3, 2009) (statement of Sen. Stabenow).

Congress intended the Amendment to help alleviate the "punitive practices of insurance companies that charge women more and give [them] less in a benefit" and to "end the punitive practices of the private insurance companies in their gender discrimination." 155 Cong. Rec. S12,021, S12,026 (statement of Sen. Mikulski); *id.* at S12,030 (statement of Sen. Dodd) ("I support the effort by

Senator Mikulski on her efforts to see to it that women are treated equally, and particularly in preventive care."). In enacting the Amendment, Congress recognized that the failure to cover women's preventive health services meant that women paid more in out-of-pocket costs than men for basic and necessary preventive care and in some instances were unable to obtain this care at all because of cost barriers:

> Women must shoulder the worst of the health care crisis, including *outrageous discriminatory practices in care and coverage.* Not only do we pay more for the coverage we seek . . . but in general women of childbearing age spend 68 percent more in out-of-pocket health care costs than men. . . . In America today, too many women are delaying or skipping preventive care because of the costs of copays and limited access. In fact, more than half of women delay or avoid preventive care because of its cost. *This fundamental inequity in the current system is dangerous and discriminatory and we must act.*

Id. at S12,027 (statement of Sen. Gillibrand) (emphases added).

In considering the Amendment, Congress expressed its expectation that the HRSA Guidelines would incorporate family planning services. *See, e.g., id.* ("With Senator Mikulski's amendment, even more preventive screening will be covered, including . . . family planning."); 155 Cong. Rec. S12,033, S12,052 (daily ed. Dec. 1, 2009) (statement of Sen. Franken) ("[A]ffordable family planning services must be accessible to all women in our reformed health care system."); 155 Cong. Rec. S12,106, S12,114 (daily ed. Dec. 2, 2009) (statement of Sen. Feinstein) ("[The

amendment] will require insurance plans to cover at no cost basic preventive services and screenings for women. This may include mammograms, Pap smears, family planning, screenings to detect postpartum depression, and other annual women's health screenings."). The Senate adopted the Women's Health Amendment by a vote of 61 to 39. *See* 155 Cong. Rec. S12,265, S12,277 (daily ed. Dec. 3, 2009); 42 U.S.C. § 300gg-13(a)(4).

To meet the Amendment's objectives, HRSA commissioned the Institute of Medicine ("IOM")[5] to "convene a diverse committee of experts in disease prevention, women's health issues, adolescent health issues, and evidence-based guidelines to review existing guidelines, identify existing coverage gaps, and recommend services and screenings for [the Department of Health and Human Services] to consider in order to fill those gaps." IOM REP. at 20-21. IOM assembled a committee of independent experts in the subject fields, which employed a rigorous methodology to analyze the relevant evidence. *See id.* at 67. The IOM panel articulated the need to focus on the distinct preventive health needs of women because "women not only have different health care needs than men (because of reproductive differences) but also manifest different symptoms and responses to treatment modalities." *Id.* at 18.

After conducting its analysis, the IOM panel recommended eight preventive services for women,

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[5] The IOM is an independent, nonprofit organization that provides unbiased evidence to help those in government and the private sector make informed health decisions. *See* Inst. of Med., *About the IOM*, http://www.iom.edu/About-IOM.aspx (last visited Jan. 21, 2014).

including "the full range of Food and Drug Administration-approved contraception methods, sterilization procedures, and patient education and counseling for women with reproductive capacity." *Id.* at 109-10.

While the IOM's recommendation was significant, it was not groundbreaking. For years, "[n]umerous health care professional associations and other organizations [have] recommend[ed] the use of family planning services as part of preventive care for women . . . ." *Id.* at 104. Additionally, various state and federal laws have recognized the compelling interest in including such coverage. For example, twenty-eight states require health plans to cover contraception, and the Equal Employment Opportunity Commission ("EEOC") interprets Title VII, as amended by the Pregnancy Discrimination Act ("PDA"), to require employers that provide health coverage for preventive health services also to provide coverage for contraception. EEOC, Decision on Coverage of Contraception, at 2-4 (Dec. 14, 2000) ("EEOC Decision"). Moreover, since 1972, Medicaid has required coverage for family planning in all state programs with no cost-sharing requirements. IOM REP. at 108. The objectives of Medicaid's family planning policy were "to improve the health of the people, to strengthen the integrity of the family and to provide families the freedom of choice to determine the spacing of their children and the size of their families." U.S. Dep't of Health, Education, and Welfare, *Handbook of Public Assistance Administration*, Supplement D (June 17, 1966). The policy also recognized the importance of providing women with a range of contraceptive methods, explaining that "[t]here shall be freedom of choice of

method so that individuals can choose in accordance with the dictates of their consciences." *Id.*

Therefore, various governmental and non-governmental actors have recognized that including contraceptive coverage in health insurance plans advances compelling interests. However, none of these incremental steps have been able to accomplish what the contraception regulations will—an across-the-board requirement that new insurance plans fully cover all FDA-approved contraceptive methods and related education and counseling without any cost-sharing. Comprehensive contraceptive coverage is no longer dependent on a woman's income level, the state in which she resides, or the health plan she chooses.[6] It is this fundamental shift in health insurance coverage of contraception—applicable across the nation—that makes the contraception regulations so critical to forwarding the government's compelling interests.

On August 1, 2011, HRSA adopted the recommendations set forth in the IOM Report. *See* HRSA Guidelines. The HRSA Guidelines apply to non-grandfathered health insurance plans in the first plan year beginning on or after August 1, 2012. *See* 77 Fed. Reg. 8,725, 8,725-26 (Feb. 15, 2012).

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[6] For example, twenty-two states do not have contraceptive equity laws; in the states that have them, the laws do not reach "self-funded" plans, which are considered to be employer benefit plans that are governed by federal law. In addition, Title VII and the PDA do not reach employers with fewer than 15 employees, and Medicaid is only available for low-income women; in fact, many state Medicaid programs do not reach their entire low-income population.

II. THE CONTRACEPTION REGULATIONS FURTHER COMPELLING GOVERNMENTAL INTERESTS.

A. Safeguarding Public Health Is a Compelling Governmental Interest.

"[T]he Government clearly has a compelling interest in safeguarding the public health by regulating the health care and insurance markets." *Mead* v. *Holder*, 766 F. Supp. 2d 16, 43 (D.D.C. 2011) (citing *Olsen* v. *Drug Enforcement Admin.*, 878 F.2d 1458, 1462 (D.C. Cir. 1989)), *aff'd Seven-Sky* v. *Holder*, 661 F.3d 1 (D.C. Cir. 2011); *see also Buchwald* v. *Univ. of N.M. Sch. of Med.*, 159 F.3d 487, 498 (10th Cir. 1998) (noting that "public health is a compelling government interest"). As the IOM Report and HRSA Guidelines make clear, access to all FDA-approved contraceptive methods and patient education and counseling without cost-sharing are critical components of preventive care for women that have demonstrable benefits for the health of women and children. Simply put, increasing access to contraception is a matter of public health. Indeed, the health of the women who depend on their employers for comprehensive health care coverage, including the women who get health insurance from the Companies, is directly at stake in these cases.

1. Unintended Pregnancies Are Highly Prevalent in the United States and Have Serious Health Consequences for Women and Children.

Nearly half of all pregnancies in the United States each year are unintended (*i.e.*, unwanted or mistimed at the time of conception). *See* Finer & Zolna, *Unintended Pregnancy in the United States:*

Incidence and Disparities, 2006, 84 CONTRACEPTION 478, 480 (2011). Unintended pregnancy is associated with a wide range of negative health consequences for the woman and the resulting child. Addressing the high unintended pregnancy rate is of great interest to the government and has been deemed a national objective by the Department of Health and Human Services. *See* U.S. Dep't of Health & Human Servs., *Healthy People 2020: Family Planning*, http://healthypeople.gov/2020/topicsobjectives2020/overview.aspx?topicId=13 (last visited Jan. 21, 2014) ("*Healthy People 2020*").

While unintended pregnancy is highly prevalent in the United States—significantly more so than in comparably-developed countries[7]—this need not be the case. *See* IOM REP. at 104. Contraception is highly effective in preventing unintended pregnancy. Failure rates of FDA-approved contraception are negligible with proper use. IUDs, female sterilization, and contraceptive implants have the lowest failure rate at 1% or less in the first 12 months—as compared with an 85% chance of

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[7] For example, "[w]hile 49% of pregnancies in the United States are unintended, the corresponding percentage in France is only 33%, and in Edinburgh, Scotland, it is only 28%." Trussell & Wynn, *Reducing Unintended Pregnancy in the United States*, 77 CONTRACEPTION 1, 4 (2008). Tellingly, the usage rates of IUDs (which have much lower failure rates than many other methods of contraception) in European countries is significantly higher than in the United States; in France, for instance, 17% of females who use contraception use IUDs, as compared to just two percent in the United States. *See* Sonfield, *Popularity Disparity: Attitudes About the IUD in Europe and the United States*, GUTTMACHER POL'Y REV., Fall 2007, at 20 ("Sonfield, *Popularity Disparity*") (reporting that IUD usage in the United Kingdom is at 11%, and in Norway reaches 27%).

pregnancy within 12 months with no contraception. *See id.* at 105.

Studies document negative health consequences of unintended pregnancy. For example, during an unintended pregnancy, a woman is more likely to receive delayed or no prenatal care, to be depressed during pregnancy, and to suffer from domestic violence during pregnancy. *See* IOM REP. at 103; *Healthy People 2020.* Moreover, some women rely on contraception to avoid pregnancy due to other medical conditions.[8] For example, it may be advisable for women with chronic medical conditions, such as diabetes and obesity, to postpone pregnancy until their health stabilizes. *See* IOM REP. at 103. Women with certain medical conditions, such as pulmonary hypertension and cyanotic heart disease, may need to avoid pregnancy altogether or risk serious medical consequences. *See id.* at 103-04.

An unintended pregnancy may also cause negative health consequences for the children resulting from unintended pregnancy. Without contraception, women are more likely to have short inter-pregnancy intervals, which are associated with preterm birth, low birth weight, and small-for-gestational-age births. *See id.* at 103. Children of unintended pregnancy are also less likely to be breastfed, which has known benefits to early development. *See id.* These children are more likely to experience poor mental and physical health during childhood, and have lower educational attainment and more behavioral issues in their teen

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[8] Contraception can also have independent health benefits, including treating menstrual disorders; reducing risks of endometrial cancer; protecting against pelvic inflammatory disease; and, potentially, preventing ovarian cancer. *See* IOM REP. at 107.

years. *See* Logan et al., *The Consequences Of Unintended Childbearing: A White Paper*, at 11 (Child Trends, Inc., 2007), *available at* http://www.thenationalcampaign.org/resources/pdf/consequences.pdf.

For all these reasons, the Centers for Disease Control and Prevention identified "family planning" as one of ten great public health achievements of the twentieth century, noting:

> Family planning has provided health benefits such as smaller family size and longer interval between the birth of children; increased opportunities for preconceptional counseling and screening; fewer infant, child, and maternal deaths; and the use of barrier contraceptives to prevent pregnancy and transmission of human immunodeficiency virus and other STDs.

Ctrs. for Disease Control & Prevention, *Ten Great Public Health Achievements–United States, 1900-1999*, 48 MORBIDITY & MORTALITY WKLY. REP. 241 (1999), *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/00056796.htm ("*Ten Great Public Health Achievements*").

2. Providing Access to the Full Range of FDA-Approved Contraceptive Methods Without Cost-Sharing Forwards Women's Health.

By requiring coverage of the full range of FDA-approved methods without cost-sharing, the contraception regulations ensure that women can choose the contraceptive method that fits their needs "depending upon their life stage, sexual practices, and health status." IOM REP. at 105. Moreover, by covering patient education and counseling, the

regulations help ensure that each woman has the information she needs to identify the form of contraception that is most appropriate for her. Women with increased cardiovascular risk, for instance, may need to use a copper IUD or other non-hormonal method to avoid the cardiovascular side effects of hormonal contraception. Sonfield, *Popularity Disparity*, at 21. In addition, women may choose an IUD over alternative forms of contraception because "IUDs and implants are more than 20 times more effective at preventing pregnancy than are [oral contraceptive pills], the contraceptive patch, and the contraceptive vaginal ring." *See* Peipert et al., *Preventing Unintended Pregnancies by Providing No-Cost Contraception*, 120 OBSTETRICS & GYNECOLOGY 1291, 1292 (2012). For different reasons, emergency contraception fills a unique and critical need. It is a woman's last chance to prevent pregnancy after sexual assault, birth control failure, or unprotected sex. Coverage of the full range of FDA-approved contraceptive methods and counseling services without cost-sharing is necessary to ensure that a woman and her medical provider can choose the contraceptive method best-suited to her needs.

This coverage without cost-sharing is especially critical because many women choose less effective methods of contraception based on cost. In particular, the high up-front costs of more effective long-acting reversible contraceptives ("LARCs")—including IUDs, which cost between $500 and $1000 up-front—deter women from accessing these methods. *See* Planned Parenthood Federation of America, IUD, http://www.plannedparenthood.org/health-topics/birth-control/iud-4245.htm (last visited Jan. 21, 2014). One study notes that "[t]he out-of-pocket cost for a woman to initiate LARC methods—

recognized as most effective, but also most expensive in the short term—was 10 times higher compared with a 1-month supply of generic oral contraceptives." Dusetzina et al., *Cost of Contraceptive Methods to Privately Insured Women in the United States*, WOMEN'S HEALTH ISSUES 23-2 (2013), e70. The same study noted: "Because of their superior effectiveness, increasing the use of LARC methods has been hailed as a key strategy to reduce the high unintended pregnancy and abortion rates in the United States. Although LARC methods eventually have lower average costs of use (*e.g.*, they can remain in place for 3 to 10 years after initial placement, compared with most short term methods that require payment for each month of use), they are considerably more expensive to initiate." *Id.* at e69.

Other forms of contraception are also associated with high costs, which often lead women to misuse contraception or to fail to use it altogether. Oral contraception costs women, on average, $2,630 over five years. Trussell et al., *Erratum to "Cost Effectiveness of Contraceptives in the United States,"* 80 CONTRACEPTION 229, 229 (2009). Other hormonal contraceptives—including injectable contraceptives, transdermal patches and the vaginal ring—cost women between $2,300 and $2,800 over a five-year period. *Id.* Studies show that high costs lead women to forego contraception completely, to choose less effective contraception methods, or to use contraception inconsistently or incorrectly. *See, e.g.*, Guttmacher Inst., A REAL-TIME LOOK AT THE IMPACT OF THE RECESSION ON WOMEN'S FAMILY PLANNING AND PREGNANCY DECISIONS, at 5 (2009), *available at* http://www.guttmacher.org/pubs/RecessionFP.pdf (finding that, to save money, women forewent contraception, skipped birth control pills, delayed

filling prescriptions, went off the pill for at least a month, or purchased fewer birth control packs at once). Accordingly, the costs of contraception can pose significant risks of unintended pregnancy, as "even a brief gap in [contraceptive] method use can have a major impact." Gold, *The Need for and Cost of Mandating Private Insurance Coverage of Contraception*, GUTTMACHER REP. ON PUB. POL'Y, Aug. 1998, at 6 ("Gold").

Evidence shows that eliminating cost barriers to contraception can greatly reduce the incidence of unintended pregnancy. One study found a "clinically and statistically significant reduction" in unintended pregnancies when at-risk women received contraceptive counseling and reversible contraceptive methods of their choice at no cost. *See* Peipert et al., 120 OBSTETRICS & GYNECOLOGY at 1291; *see also* Ctr. for Prevention and Health Servs., Nat'l Bus. Grp. on Health, *Investing in Maternal and Child Health* (2007) Part 4, at 12, 37-38, *available at* https://www.businessgrouphealth.org/pub/f3004374-2354-d714-5186-b5bc1885758a. That same study attributed this reduction at least in part to the provision of "access to IUDs and implants that [study participants] otherwise might not have had." Peipert et al., 120 OBSTETRICS & GYNECOLOGY at 1295.

In another study, Kaiser Permanente found that when out-of-pocket costs for contraceptives were eliminated or reduced for "the most effective forms of contraception, including IUDs and injectables," as well as emergency contraceptives, their use increased and the estimated annual contraceptive failure rate decreased. *See* Postlethwaite et al., *A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change*, 76 CONTRACEPTION 360, 360, 363 (2007).

Cost barriers to consistent use of contraceptives and to use of the most effective forms of contraceptives contribute to an unplanned pregnancy rate for poor women that is five times that of higher income women. *See* Sonfield, *What Women Already Know: Documenting the Social and Economic Benefits of Family Planning*, GUTTMACHER POL'Y REV., Winter 2013, Vol. 16, No. 1, at 10 ("Sonfield, *What Women Already Know*"). Eliminating these cost barriers is critical for reducing unintended pregnancy rates. By removing cost barriers to both the full range of contraceptives and the education and counseling that help women identify the most effective methods of contraception appropriate for them, the contraception regulations forward compelling health interests, including the interests of the Companies' employees and the employees' dependents.

B. The Contraception Regulations Forward the Compelling Governmental Interest of Promoting Gender Equality.

Covering contraception and patient counseling in health insurance plans without cost-sharing serves to remedy the longstanding practice of denying insurance coverage for reproductive health care, which imposes costs primarily on women. In addition, by improving women's ability to control whether and when they will have a child, contraceptive coverage also fosters women's ability to participate in education and the workforce on equal footing with men. The regulations forward this compelling interest in women's equality both among the broader public and for the individual women covered by the Companies' insurance plans.

1. Promoting Gender Equality, Including Equal Access to Health Care, Is a Compelling Governmental Interest.

Eliminating gender discrimination and promoting women's equality are compelling state interests. *Bd. of Dirs. of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U.S. 537, 549 (1987) (recognizing "State's compelling interest in eliminating discrimination against women"); *Roberts* v. *U.S. Jaycees*, 468 U.S. 609 (1984) (finding that a state law forbidding gender discrimination in public accommodations did not unconstitutionally burden First Amendment right of expressive association). Specifically, this Court has recognized "the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women," and has thus found that "[a]ssuring women equal access to . . . goods, privileges, and advantages clearly furthers compelling state interests." *Roberts*, 468 U.S. at 626; *see also id.* at 623 (holding that the state's "compelling interest in eradicating discrimination against its female citizens" justified the statute's impact on associational freedoms); *United States* v. *Virginia*, 518 U.S. 515, 532 (1996) (noting that fundamental principles are violated when "women, simply because they are women" are denied the "equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities"); *Catholic Charities of Sacramento, Inc.* v. *Super. Ct. of Sacramento Cnty.*, 85 P.3d 67, 92 (Cal. 2004) ("The [contraceptive coverage law] serves the compelling state interest of eliminating gender discrimination.").

2. Excluding Health Insurance Coverage for Contraception Discriminates Against Women.

Employers that exclude women's preventive health services from their health insurance plans while covering men's preventive services discriminate against women. Such exclusion means that women are denied the comprehensive preventive health coverage provided to men. Moreover, when effective contraception is not used, and unintended pregnancy results, it is women who incur the attendant physical burdens and medical risks of pregnancy, women who disproportionately bear the health care costs of pregnancy and childbirth, and women who often face barriers to employment and educational opportunities as a result of pregnancy.

Indeed, the EEOC, in considering a Title VII challenge to an employer's failure to include contraceptive coverage in its health insurance policy that provided otherwise comprehensive coverage of prescription drugs, found that Congress, in passing the PDA, sought to "equalize employment opportunities for men and women" and to "address discrimination against female employees that was based on assumptions that they would become pregnant." EEOC Decision at 1-3. Noting that "[c]ontraception is a means by which a woman controls her ability to become pregnant," the EEOC accordingly held that "the PDA's prohibition of discrimination in connection with a woman's ability to become pregnant necessarily includes the denial of benefits for contraception." *Id.* at 2-3.[9]

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[9] Several federal courts have agreed with the EEOC. *See, e.g., Erickson* v. *Bartell Drug Co.*, 141 F. Supp. 2d 1266, 1276

The instant cases do not present the question of the reach of the PDA (and this Court need not address this question to reject the Companies' RFRA claims). However, Congress, in passing the Women's Health Amendment, was acting on the same principle as the EEOC: that increased access to contraception promotes equality for women. By ensuring that women and men are treated equally in accessing basic preventive health care services, the contraception regulations advance the compelling interest in remedying sex discrimination.

3. Women's Disproportionate Share of Health Care Costs, Including the Cost of Contraceptives, Harms Women's Health and Economic Status.

Pervasive gender inequalities continue to infect the provision of health care. Women's different health needs and the historical failure to cover women's health needs to the same extent as men's has meant that women have paid more out-of-pocket costs and

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(W.D. Wash. 2001) (holding that "the exclusion of prescription contraceptives from a generally comprehensive insurance policy constitutes sex discrimination under Title VII."); *Mauldin* v. *Wal-Mart Stores, Inc.*, No. 01-cv-2755, 2002 WL 2022334, at *19 (N.D. Ga. Aug. 23, 2002) (certifying class of female employees alleging that a lack of coverage of prescription contraception violated Title VII and the PDA); *but see In re Union Pac. R.R. Emp't Practices Litig.*, 479 F.3d 936, 943 (8th Cir. 2007) (disagreeing with the EEOC's conclusion that the PDA requires employers to provide contraception coverage). Moreover, several states have interpreted their laws prohibiting sex discrimination to require health insurance coverage of contraception and related medical services. *See, e.g.*, Mich. Civil Rights Comm'n, *Declaratory Ruling on Contraceptive Equity*, at 1 (Aug. 21, 2006); 51 Mont. Op. Att'y Gen. 16, at 7 (Mar. 28, 2006); Office of the Wisc. Att'y Gen., OAG-1-04, 2004 WL 3078999, at 1-2 (Aug. 16, 2004).

disproportionately borne the burden of health care expenditures. *See* IOM REP. at 18-19.

Women pay substantially more to access basic health care than do men and are significantly more likely to be burdened with high medical costs. Women of childbearing age spend 68% more in out-of-pocket health care costs than men. Gold at 5; *see also* Women's Research And Educ. Inst., WOMEN'S HEALTH INSURANCE COSTS AND EXPERIENCES, at 2 (1994). A primary contributing factor to cost disparities is the high cost of contraception, because all forms of prescription contraception available today are for women. *See* IOM REP. at 18-19. As a result, while both men and women have interests in avoiding unintended pregnancy, women bear most of the associated health care costs.

The impact of these higher health care costs is magnified by women's lower incomes. Women earn, on average, just 77 cents for every dollar earned by men. *See* DeNavas-Walt et al., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2011, at 7 (2012), *available at* http://www.census.gov/prod/2012pubs/p60-243.pdf. Women of color earn even less.[10] Moreover, women, particularly women of color, are more likely to be poor than men,[11] thus increasing

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[10] For every dollar earned by white, non-Hispanic men, African American women earn just 64 cents, while Hispanic women earn just 54 cents. *See* Nat'l Women's Law Ctr., FAQ ABOUT THE WAGE GAP, at 2 (2013), *available at* http://www.nwlc.org/sites/default/files/pdfs/wage_gap_faqs_sept_2013.pdf.

[11] In 2011, the poverty rate for women in the U.S. was 14.6%, compared with 10.9% for men. For African American women, the rate was 25.9% and 23.9% for Hispanic women. *See* Nat'l

the likelihood that women will face cost barriers to accessing needed health care.

Indeed, one study drawing from the Commonwealth Fund 2007 Biennial Health Insurance Survey found that 62% of women surveyed, compared with 48% of men, reported trouble paying medical bills, cost barriers to needed health care, or both. *See* Rustgi et al., *Women at Risk: Why Many Women are Forgoing Needed Health Care*, ISSUE BRIEF (The Commonwealth Fund), May 2009, at 2, *available at* http://www.commonwealthfund.org/~/media/Files/Publications/Issue%20Brief/2009/May/Women%20at%20Risk/PDF_1262_Rustgi_women_at_risk_issue_brief_Final.pdf. In addition, women were more likely to spend a significant share of their income on out-of-pocket health care costs than men—35% of women surveyed, compared with 31% of men, spent 10% or more of their income on such costs. *Id.* at 3. The figures are even starker among low-income women: 55% of women earning less than $20,000 spent more than 10% of their income on out-of-pocket health care costs in 2007. *Id.* The study also showed that 32% of women who reported problems paying medical bills or medical debt—versus 24% of men—were, as a result of such medical costs, unable to pay for basic necessities, such as food, heat, or rent, or took on debt. *Id.* at 5.

Given these statistics, the disproportionately high health care costs borne by women create "financial

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Women's Law Ctr., INSECURE AND UNEQUAL: POVERTY AND INCOME AMONG WOMEN AND FAMILIES 2000-2011, at 3 (2012), *available at* http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_povertyreport.pdf.

barriers . . . that prevent women from achieving health and well-being for themselves and their families." IOM REP. at 20.

4. Promoting Women's Access to Contraception Leads to Greater Social and Economic Opportunities for Women.

Contraception puts women in control of their fertility, allowing them to decide whether, and when, to bear children. As this Court has recognized, "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." *Planned Parenthood of Se. Pa.* v. *Casey*, 505 U.S. 833, 856 (1992). Similarly, the Centers for Disease Control and Prevention recognized that "[a]ccess to family planning and contraceptive services has altered social and economic roles of women." *Ten Great Public Health Achievements.*

A majority of women report the ability to better control their lives as a very important reason for using birth control. Frost & Lindberg, GUTTMACHER INST., REASONS FOR USING CONTRACEPTION: PERSPECTIVES OF U.S. WOMEN SEEKING CARE AT SPECIALIZED FAMILY PLANNING CLINICS, at 9 (2012), *available at* http://www.guttmacher.org/pubs/journals/j.contraception.2012.08.012.pdf. For example, increased control over reproductive decisions provides women with educational and professional opportunities that have advanced gender equality over the decades since birth control's effectiveness has improved and access to birth control has expanded. Indeed, "[e]conomic analyses have found clear associations between the availability and diffusion of oral contraceptives[,] particularly among

young women, and increases in U.S. women's education, labor force participation, and average earnings, coupled with a narrowing in the wage gap between women and men." *Id.* at 3. One study looking at the effect of access to birth control on women's education and employment in the 1970s reports that "women in states with easier and earlier pill access were 10% to 20% more likely to be enrolled in college at age 21 and had higher earnings trajectories that persisted even into their 40s—a finding that remained robust even after netting out the influence of other factors." The Nat'l Campaign to Prevent Teen and Unplanned Pregnancy, *Getting the Facts Straight on the Benefits of Birth Control in America: Summary*, at 3, (Nov. 2013), *available at* http://www.thenationalcampaign.org/resources/pdf/briefly-facts-straight.pdf.

In addition, a number of analyses have connected the advent of oral contraception to significant augmentation of women's wages. One study found that "the Pill-induced effects on wages amount to roughly one-third of the total wage gains for women in their forties born from the mid-1940s to early 1950s." Bailey et al., *The Opt-In Revolution? Contraception and the Gender Gap in Wages* 26-27 (Nat'l Bureau of Econ. Research, Working Paper No. 17922, 2012), *available at* http://www-personal.umich.edu/~baileymj/Opt_In_Revolution.pdf. That same study estimates that approximately 10% of the narrowing of the wage gap during the 1980s and 31% during the 1990s can be attributed to access to oral contraceptives prior to age 21. *See id.* at 27. Another study concludes that the advent of oral contraceptives contributed to an increase in the number of women employed in professional occupations, including as doctors and

lawyers. *See* Goldin & Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. POL. ECON. 730, 758-62 (2002). In a study that specifically asked women why they use contraceptives, a "majority of women reported that, over the course of their lives, access to contraception had enabled them to better take care of themselves or their families, support themselves financially, complete their education, or get or keep a job . . . ." Sonfield, *What Women Already Know*, at 8.

In enacting the Women's Health Amendment, Congress understood that the Amendment—including its broadening of access to family planning services—would be "a huge step forward for justice and equality in our country." 155 Cong. Rec. S12,033, S12,052 (daily ed. Dec. 1, 2009) (statement of Sen. Franken); *see also supra* Sec. I.

The compelling interests forwarded by the contraception regulations would be undermined if the Companies—and other for-profit companies that could follow suit—were granted an exemption. Equally as important, the harm of such an exemption would fall squarely on those the regulations were designed to protect—female employees and dependents, including those who get their health insurance through these Companies.

III. THE RIGHTS AND INTERESTS OF THE EMPLOYEES AND DEPENDENTS COVERED BY THE CONTRACEPTION REGULATIONS BEAR HEAVILY ON THE COMPANIES' RFRA CLAIMS.

The compelling nature of the interests forwarded by the contraception regulations make clear that the exemptions the Companies seek would harm third

parties—the women covered by the Companies' health plans. These women have a right under the ACA to insurance coverage of contraceptives, without cost-sharing.[12] If the Companies and similar entities are allowed to deny women that right, then cost barriers to contraception could lead to those women being unable to use the most effective and most appropriate method of contraception for them and cause them to bear costs in accessing basic preventive health care that men need not shoulder.[13] This harm to third parties is highly relevant in considering the Companies' RFRA claims.

In enacting RFRA, Congress was clear that it intended to restore the full breadth of Supreme Court Free Exercise jurisprudence as it existed prior to *Employment Division, Department of Human Resources of Oregon* v. *Smith*, 494 U.S. 872 (1990). *See, e.g.*, S. Rep. No. 103-111, at 12, *reprinted in* 1993 U.S.C.C.A.N. 1892, 1902 ("[T]he purpose of this act is only to overturn the Supreme Court's decision in *Smith* . . ."); *id.* at 8-9 ("The committee expects that the courts will look to free exercise cases decided prior to *Smith* for guidance in determining whether the exercise of religion has been substantially burdened and the least restrictive means have been employed in furthering a compelling governmental

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[12] These women may also have rights to contraception coverage under the PDA and state law. *See supra* Sec. I.

[13] The Tenth Circuit, in holding that Hobby Lobby's RFRA rights were violated, erred in unreasonably dismissing both these women's need for comprehensive coverage of all FDA-approved methods of birth control and the economic burden the exemption imposes on women. *See Hobby Lobby Stores, Inc.* v. *Sebelius*, 723 F.3d 1114, 1144 (10th Cir. 2013), *cert. granted* 134 S. Ct. 678 (2013).

interest."). Thus, when applying RFRA's compelling interest test, the Court must be mindful of its previous construction of the Free Exercise clause, including the principle that "[t]he First Amendment must apply to all citizens alike, and it can give to none of them a veto over public programs that do not prohibit the free exercise of religion." *Lyng* v. *Nw. Indian Cemetery Protective Assoc.*, 485 U.S. 439, 452 (1988).

As Supreme Court pre-*Smith* jurisprudence made clear, "[n]ot all burdens on religion are unconstitutional." *United States* v. *Lee*, 455 U.S. 252, 257 (1982); *see also Gilardi* v. *U.S. Dep't of Health & Human Servs.*, 733 F.3d 1208, 1231 (D.C. Cir. 2013) (Edwards, J., concurring in part and dissenting in part) ("[T]he Free Exercise Clause does not ensure freedom from any regulation to which a party holds a religious objection."). Indeed, when applying the balancing test set out in *Sherbert* v. *Verner*, 374 U.S. 398 (1963), that RFRA restored, this Court has routinely held that religious activities must give way to the administration of general public welfare legislation. *See Bowen* v. *Roy*, 476 U.S. 693, 708-12 (1986); *Lee*, 455 U.S. at 261; *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 604 (1983); *Hernandez* v. *Comm'r*, 490 U.S. 680, 700-01 (1989). Prior to *Smith*, this Court generally protected the exercise of religion when the "sole conflict is between authority and rights of the individual" but permitted much less latitude when the plaintiff's religious practice "bring[s] them into collision with rights asserted by any other individual . . . ." *W. Va. State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 630 (1943).

For example, in *United States* v. *Lee*, an Amish employer with Amish employees claimed that with-

holding social security taxes violated the employer's free exercise rights because the Amish religion requires adherents to assist each other and forbids the payment or receipt of social security benefits. The Court rejected this challenge, noting that the nationwide nature of the program made the governmental interest "apparent" and "mandatory participation is indispensable to the fiscal vitality of the social security system." 455 U.S. at 258. The Court distinguished *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), where an Amish family was exempted from a compulsory school attendance law despite the State's interest in ensuring educational opportunities for children, by noting that one employer's religious beliefs could not override a broad federal scheme to the detriment of his employees:

> When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity. Granting an exemption from social security taxes to an employer operates to impose the employer's religious faith on the employees.

Lee, 455 U.S. at 259-61.

Similarly, in *Prince* v. *Massachusetts*, the Court applied child labor laws to a Jehovah's Witness who gave her minor niece religious tracts to distribute in the streets, holding that despite the sincerity of the plaintiff's beliefs, the State's interest in protecting children, like the plaintiff's niece, from the harms of laboring in the streets was sufficiently compelling to outweigh any burden on the plaintiff's exercise of religion. 321 U.S. 158, 167 (1944); *see also Tony and*

Susan Alamo Found. v. *Dep't of Labor*, 471 U.S. 290, 304-05 (1985) (rejecting a free exercise challenge by a nonprofit religious organization to minimum wage and record-keeping requirements).[14] And in reviewing the religious accommodation standard set out in the Religious Land Use and Institutionalized Persons Act, this Court has emphasized that "courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries" and has warned that "an accommodation must be measured so that it does not override other significant interests." *Cutter* v. *Wilkinson*, 544 U.S. 709, 720, 722 (2005). *Cf. Estate of Thornton* v. *Caldor*, 472 U.S. 703, 710 (1984) ("The First Amendment . . . gives no one the right to insist that, in pursuit of their own interests, others must conform their conduct to his own religious necessities.") (quoting *Otten* v. *Baltimore & Ohio R. Co.*, 205 F.2d 58, 61 (2d Cir. 1953)).

The Court also has declined to protect discriminatory religious practices that harm others and, by extension, the public interest. For example, in *Bob Jones University*, the Court upheld the denial of tax-exempt status for a university that had racially discriminatory policies; although the university claimed that the discrimination was rooted in religious beliefs forbidding interracial marriage and dating, this Court held that the government need not accommodate religious beliefs that violate the public interest. 461 U.S. at 603-04.

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[14] In all of these cases, the Court rejected the free exercise challenge even though the individuals whose rights were threatened held *the same religious beliefs* as the objector. The Court's concerns should be even stronger where an employer seeks to impose its religious beliefs on employees of diverse faiths.

As these cases demonstrate, this Court has never held that religious exercise provides a license to harm others or violate the rights of third parties. *See Catholic Charities of Sacramento, Inc.*, 85 P.3d at 93 ("We are unaware of any decision in which . . . the United States Supreme Court, has exempted a religious objector from the operation of a neutral, generally applicable law despite the recognition that the requested exemption would detrimentally affect the rights of third parties."). RFRA did not overturn this basic principle. *See* S. Rep. No. 103-111, at 9 ("This bill is not a codification of the result reached in any prior free exercise decision but rather the restoration of the legal standard that was applied in those decisions. Therefore, the compelling interest test generally should not be construed more stringently or more leniently than it was prior to *Smith*.").

Providing the exemption the Companies seek would directly affect the rights of a significant number of third parties: the female employees and dependents who are covered under the Companies' health insurance plans and the countless other women who would be harmed if other companies follow suit. Such an exemption would reinstate the gender disparities that pervaded the prior insurance scheme and undermine the "entire point" of the Women's Health Amendment: "to redress a history of gender-based inequalities in healthcare and health insurance." *Korte* v. *Sebelius*, 735 F.3d 654, 727 (7th Cir. 2013) (Rovner, J., dissenting).[15] By restoring barriers to contraception access, the exemption would

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[15] In addition, granting an exemption in this case could open the door for other for-profit corporations to argue for exemptions to any number of laws based on their religious beliefs.

threaten these individuals' health (and the health of children they might conceive) and would impose financial burdens on women seeking basic preventive health care that men do not face. And by heightening the risk of unintended pregnancy, it would threaten these female employees and dependents with long-term consequences for their economic, educational, and employment opportunities. In short, exempting the Companies would improperly "impose the employer's religious faith on the employees," to those employees' detriment. *See Lee*, 455 U.S. at 261.

IV. THAT THE GOVERNMENT PROVIDES FOR CERTAIN EXEMPTIONS DOES NOT NEGATE THE COMPELLING GOVERNMENTAL INTERESTS FORWARDED BY THE REGULATIONS.

The Companies have argued that certain "exemptions" from the contraception regulations—including for employers with fewer than 50 employees, those with "grandfathered" group health plans and religious employers—undermine the government's assertion of compelling interests. The Companies' arguments are meritless.

First, there is no exemption from the contraception regulations for employers with fewer than 50 full-time employees. Instead, these employers are exempt from the shared responsibility provision of the ACA, which requires certain employers who fail to provide health insurance to pay an assessable fee. *See* 26 U.S.C. § 4980H(a), (c)(2)(A). Even employers with fewer than 50 employees who provide non-grandfathered health insurance plans must comply with the contraception regulations. *See Gilardi*, 733 F.3d at 1241 (Edwards, J., concurring in part and dissenting in part) ("Small businesses that do elect to

provide health coverage—as many do in order to offer more competitive benefits to employees and to receive tax benefits—must provide coverage that complies with the" contraception regulations).

Second, the so-called exemption for grandfathered plans is not a true exemption at all. *See* 42 U.S.C. § 18011; 45 C.F.R. § 147.140. A health insurance plan relinquishes its grandfathered status if certain changes are made to the plan, such as a significant reduction in coverage or increase in co-payments. 45 C.F.R. § 147.140. Rather than providing an exemption, the grandfathering provision provides for a gradual transition to the new regulatory scheme as health plans lose their grandfathered status over time. Indeed, much like a delayed statutory effective date or building safety codes that only apply to new construction, "[t]he exemption for grandfathered plans is temporary, intended to be a means for gradually transitioning employers into mandatory coverage." *Gilardi*, 733 F.3d at 1241 (Edwards, J., concurring in part and dissenting in part); *see also Korte*, 735 F.3d at 728 (Rovner, J., dissenting) ("[G]randfathering existing workplace health plans follows a time-honored and commonsensical path in expediting the implementation of a new, complex, and potentially burdensome regulation."). In any event, worker enrollment in grandfathered plans has decreased significantly—from 56% in 2011 to just 36% in 2013. *See* Kaiser Family Found., *Employer Health Benefits 2013 Annual Survey: Grandfathered Health Plans*, at 196, *available at* http://kaiserfamilyfoundation.files.wordpress.com/2013/08/8465-employer-health-benefits-20132.pdf. Additional plans can be expected to lose their grandfathered status in each subsequent year, thus

bringing those plans within the scope of the contraception regulations.

Third, the "religious employer" exemption from the contraception regulations—"[t]he *only* permanent, specific exemption from" the regulations, *Gilardi*, 733 F.3d at 1241 (Edwards, J., concurring in part and dissenting in part) (emphasis added)—is restricted "primarily to group health plans established or maintained by churches, synagogues, mosques, and other houses of worship, and religious orders." 78 Fed. Reg. 8,456, 8,461 (Feb. 6, 2013); 45 C.F.R. § 147.130(a)(1)(iv)(B). Exempting religious institutions in this way is an accepted means of accommodating religious objections while maintaining the integrity of the public scheme and promoting the compelling governmental interest. *See, e.g.*, *Catholic Charities of Sacramento, Inc.*, 85 P.3d at 79-80 (California's contraceptive coverage law); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327, 338-39 (1987) (Title VII); *Nat'l Labor Relations Bd.* v. *Catholic Bishop of Chicago*, 440 U.S. 490, 506 (1979) (National Labor Relations Act). This narrow exemption does not contradict the government's compelling interests and "by no means demonstrates that an exemption is required for any employer with a potential religious objection to contraception or any other type of healthcare." *Korte*, 735 F.3d at 729 (Rovner, J., dissenting); *see also Lee*, 455 U.S. at 261 (explaining that Congress was justified in "dr[awing] a line . . . exempting the self-employed Amish but not all persons working for an Amish employer"); *S. Ridge Baptist Church* v. *Indus. Comm'n of Ohio*, 911 F.2d 1203, 1209 (6th Cir. 1990) (finding that a "limited exemption" to Ohio's workers' compensation scheme did "not diminish the state's compelling interest in" the program).

Moreover, it is not uncommon for federal statutes promoting equality interests to have limited exemptions. For example, Title VII—the landmark federal statute prohibiting employment discrimination in the Civil Rights Act of 1964—exempts employers with fewer than 15 employees from its non-discrimination provisions. 42 U.S.C. § 2000e(b); *see also, e.g.*, 42 U.S.C. § 12111 (exempting employers with less than 15 employees from the Americans with Disabilities Act); 29 U.S.C. § 2611(4)(A)(i) (Family Medical Leave Act only applies to employers with "50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year"); 20 U.S.C. § 1681(a)(3) (Title IX's prohibition on sex discrimination in education not applicable to "an educational institution which is controlled by a religious organization if the application of [the prohibition] would not be consistent with the religious tenets of such organization"). Yet no court has found or suggested that, as a result of such exemptions, these federal statutes do not forward the government's compelling interest in eliminating discrimination. *See, e.g.*, *Equal Emp't Opportunity Comm'n* v. *Fremont Christian Sch.*, 781 F.2d 1362, 1368-69 (9th Cir. 1986) (rejecting a free exercise challenge to the application of Title VII to a health insurance plan offered only to "heads of households"—defined as single persons and married men—based on the government's compelling interest in eliminating employment discrimination based on sex); *Lumpkin* v. *Brown*, 109 F.3d 1498, 1500-01 (9th Cir. 1997) (rejecting RFRA claim where government had compelling interest in anti-discrimination policies); *Equal Emp't Opportunity Comm'n* v. *Pac. Press Pub. Ass'n*, 676 F.2d 1272, 1280 (9th Cir. 1982)

(rejecting free exercise challenge to Title VII and stating that "Congress' purpose to end discrimination is equally if not more compelling than other interests that have been held to justify legislation that burdened the exercise of religious convictions."). Rather, "[i]t is left to the respective legislatures to determine whether the [government]'s compelling interest in the fiscal vitality of these programs and the underlying societal purposes would be compromised by certain selective exemptions." *S. Ridge Baptist Church*, 911 F.2d at 1209.

The Companies' argument that the contraception regulations do not advance a compelling state interest because of the scope of the "exemptions" is equally unavailing. Notwithstanding the grandfathering provision and religious exemption, the contraception regulations will have widespread effects. Over 27 million women are now covered by this benefit and are now able to get their birth control with no out-of-pocket costs.[16] The contraception regulations already protect women in non-grandfathered plans and will guarantee contraception to millions of additional women as health plans lose their grandfathered status over time. They substantially further compelling interests in public health and women's equality.

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[16] Skopec & Sommers, U.S. DEP'T OF HEALTH & HUMAN SVCS., SEVENTY-ONE MILLION ADDITIONAL AMERICANS ARE RECEIVING PREVENTIVE SERVICES COVERAGE WITHOUT COST-SHARING UNDER THE AFFORDABLE CARE ACT, at 3 (2013), *available at* http://aspe.hhs.gov/health/reports/2013/PreventiveServices/ib_prevention.cfm.

CONCLUSION

For the foregoing reasons, this Court should deny the Companies' challenge to the contraception regulations.

Respectfully submitted,

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APPENDIX

APPENDIX

The National Women's Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the protection of women's legal rights and the advancement of women's opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women, and has participated as counsel or *amicus curiae* in a range of cases before this Court.

9to5 is a national membership-based organization of women in low-wage jobs dedicated to achieving economic justice and ending discrimination. Our members and constituents are directly affected by workplace discrimination and poverty, among other issues. 9to5 is committed to protecting and advancing women's access to health care and achieving workplace equality.

The Abortion Care Network is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

Advocates for Youth is committed to protecting and advancing young people's sexual health and rights. In particular, Advocates works to ensure young women's access to affordable health services such as contraception.

In 1881, the **American Association of University Women (AAUW)** was founded by like-minded women who had defied society's conventions by earning

college degrees. Since then, AAUW has worked to break through barriers for women and girls through research, advocacy, and philanthropy. Today, AAUW has approximately 170,000 bipartisan members and supporters, approximately 1000 branches, and approximately 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues, and among them are reproductive rights. In adherence to our member-adopted Public Policy Program, AAUW supports choice in the determination of one's reproductive life and increased access to quality, affordable health care and family planning services, including expansion of patients' rights.

The **American Federation of State, County and Municipal Employees (AFL-CIO)** is a labor organization with 1.6 million members in hundreds of occupations who provide vital public services in 46 states, the District of Columbia, and Puerto Rico. With well over half its members being women, AFSCME has a long history of advocating for gender equality.

The **American Federation of Teachers (AFT)**, an affiliate of the AFL-CIO, represents 1.5 million members in more than 3,000 local affiliates nationwide and overseas in K-12 and high education, public employment and healthcare. AFT has a strong interest in supporting the rights of women in the area of reproductive choice. AFT considers reproductive healthcare, including contraception, as basic healthcare for women. Therefore, the AFT believes it must be covered as a preventive health service in order to provide quality healthcare for all women. Furthermore, the fair and equal treatment of a woman's right to make her own personal healthcare

decisions regarding reproduction and other health issues is an important part of AFT's mission to advance the workplace rights of all its members.

The **American Sexual Health Association** has worked for almost 100 years to protect the nation's sexual health.

Animal Safehouse Incorporated is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The Asian & Pacific Islander American Health Forum is a national health justice organization committed to achieving health equity for Asian American, Native Hawaiian, and Pacific Islanders. We fully support the Affordable Care Act's investment in preventive health including access to contraceptives with no cost-sharing.

Association of Asian Pacific Community Health Organizations is committed to protecting and advancing women's health in our member centers and partner organizations, particularly to ensure that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The Black Women's Health Imperative is the only organization devoted solely to advancing the health and wellness of America's 19.5 million Black women and girls through advocacy, community health and wellness education, and leadership development.

California Women Lawyers (CWL) has represented the interests of more than 30,000 women in all facets

of the legal profession since 1974. CWL's mission includes advancing women's interests, extending universal equal rights, and eliminating bias. In pursuing its values of social justice and gender equality, CWL often joins *amici* briefs challenging discrimination by private and governmental entities, weighs in on proposed California and federal legislation, and implements programs fostering the appointment of women and other qualified candidates to the bench.

The **Coalition of Labor Union Women** is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act. The Coalition of Labor Union Women is a strong advocate for the needs of women and families by educating its members and the broader labor community about the rights of all women to have access to a full range of health care, including reproductive care, which encompasses abortions and contraception.

The Connecticut Women's Education and Legal Fund (CWEALF) is a nonprofit women's rights organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF protects the rights of individuals in the legal system, educational institutions, workplaces, and in their private lives. Since its founding in 1973, CWEALF has provided legal information and conducted public policy and advocacy to advance women's rights. Throughout our history, we have defended women's access to full reproductive health services,

and are committed to protecting equality in women's health, as intended by the Affordable Care Act.

Equal Rights Advocates (ERA) is a national civil rights advocacy organization whose mission is to protect and expand economic and educational access and opportunities for women and girls. In concert with our continued commitment to obtaining women's equality in the workplace, ERA is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The **Feminist Majority Foundation (FMF)**, founded in 1987, is the largest feminist research and action organization dedicated to women's equality and reproductive health. FMF's programs focus on advancing the legal, social, and political equality of women. To carry out these aims, FMF engages in research and public policy development, public education programs, grassroots organizing projects, and leadership training and development programs. FMF has filed numerous *amicus curiae* briefs in the U.S. Supreme Court and the federal circuit courts to advance the opportunities for women and girls.

Franklin Forum is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

Gender Justice is a nonprofit advocacy organization based in the Midwest that is committed to the eradication of gender barriers through impact litigation, policy advocacy, and education. As part of

its litigation program, Gender Justice represents individuals and provides legal advocacy as *amicus curiae* in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that the contraceptive coverage provisions of the Affordable Care Act are implemented to eliminate gender gaps in access to health care.

Ibis Reproductive Health aims to improve women's reproductive autonomy, choices, and health worldwide and works to expand women's access to safe, affordable abortion, the full range of contraceptive methods, and tools to prevent HIV and other sexually transmitted infections. We are committed to ensuring women receive the full benefits of no-cost-sharing contraceptive coverage as intended under the Affordable Care Act.

The Institute for Science and Human Values is committed to protecting and advancing women's full equality and health, with a particular interest in ensuring that women receive all of the benefits of access to paid contraceptive coverage, as provided in the Affordable Care Act, without regard to the religious views of their private employer.

Jewish Women International (JWI), with 50,000 members and supporters across the country, is the leading Jewish organization working to prevent the cycle of violence and empower women and girls to realize the full potential of their strength. In 1968, five years before *Roe v. Wade*, JWI (formally B'nai B'rith Women) called for laws that would protect women from having to seek often life-threatening illegal abortions, a right that the organization has reaffirmed multiple times through the years. Since the landmark 1973 Supreme Court decision in *Roe v. Wade*, we have been an unwavering Jewish voice for

comprehensive reproductive health services. JWI continues to advocate for access to reproductive health information and services, which build a foundation for healthier families and communities and believes that women deserve to be able to make private health decisions according to the dictates of their own faith and conscience.

Law Students for Reproductive Justice trains and mobilizes law students and lawyers across the country to foster legal expertise and support for the realization of reproductive justice. We believe that reproductive justice will exist when all people can exercise the rights and access the resources they need to thrive and to decide whether, when, and how to have and parent children with dignity, free from discrimination, coercion, or violence.

The League of Women Voters of the United States has long standing positions in support of equal access to health care and equal rights for women.

Legal Momentum: The Women's Legal Defense Fund is a 44-year-old organization committed to the protection and improvement of women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

Legal Voice is a nonprofit public interest organization in the Pacific Northwest that works to advance the legal rights of all women through litigation, legislation, and the provision of legal information. Since its founding in 1978, Legal Voice has been involved in both litigation and legislation aimed at ending discrimination against women—including in health care services. Legal Voice has

been at the forefront of advocating for comprehensive reproductive health care, including contraceptive equity and insurance coverage for women's health needs, and serves as a regional expert on reproductive health and justice. Legal Voice has a strong interest in ensuring that the Affordable Care Act's contraceptive coverage provisions are upheld and implemented so that women have access to coverage for the health care they need and deserve.

Mabel Wadsworth Women's Health Center is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The Maine Women's Health Campaign is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The **Maine Women's Lobby** is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The Maryland Women's Coalition for Health Care Reform, an alliance of individuals and 96 organizations, is committed to ensuring that all Marylanders have access to high-quality, affordable and comprehensive health care. That encompasses the need to protect and advance women's health and, in particular, to ensure that they receive full access

to comprehensive contraceptive coverage without cost-sharing as intended by the Affordable Care Act.

MergerWatch is a non-profit nonpartisan organization whose mission is to protect patients' rights and access to care from the impact of religiously-based health care restrictions and provider refusals. Our primary work is assisting community residents, hospital executives, and public policymakers when nonsectarian (or non-religious) hospitals are considering business partnerships with religiously-sponsored hospitals, especially those affiliated with the Catholic Church, which prohibits the provision of some reproductive health services. Since our founding 15 years ago, MergerWatch staff have worked on more than 90 proposed religious/non-sectarian hospital mergers in 34 states. We have helped bring about a number of creative approaches to ensuring continued community access to reproductive health services threatened by the introduction of religious health care restrictions. We have also assisted state-based reproductive health advocates in securing policies that (a) require all hospitals to offer emergency contraception to rape victims; (b) require contraceptive coverage with no religious employer exemption or a very narrow one; and (c) ensure that women can fill contraceptive prescriptions at local pharmacies when individual pharmacists raise religious or moral objections.

The **Ms. Foundation for Women** has sought to advance women's equality for almost 40 years. Through our grants and program work we advance women's economic equality, reproductive health, and safety with a particular focus on eliminating the barriers women face as a result of their gender, race, class, sexual orientation, disability, or age. The Ms.

Foundation recognizes that access to affordable, quality contraception is vital to women's health and well-being and central to promoting gender equality.

NARAL Pro-Choice America is a national advocacy organization, dedicated since 1969 to supporting and protecting, as a fundamental right and value, a woman's freedom to make personal decisions regarding the full range of reproductive choices through education, organizing, and influencing public policy. NARAL works to guarantee every woman the right to make personal decisions regarding the full range of reproductive choices, and contraceptive coverage is critical to this goal.

The National Abortion Federation is the professional association of abortion providers in North America, representing nonprofit and private facilities, women's health centers, hospitals, and private physicians' offices, who together care for more than half the women who choose abortion in the United States and Canada each year. Our mission is to ensure safe, legal, and accessible abortion care, which promotes health and justice for women.

National Advocates for Pregnant Women is a nonprofit organization that works to secure the civil and human rights, health, and welfare of all women, focusing particularly on pregnant and parenting women.

The **National Association of Commissions for Women** is committed to women's equality, including protecting and advancing women's health. We believe that women should receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The National Association of Women Lawyers is devoted to the interests of women lawyers and women's rights and is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The National Center for Lesbian Rights (NCLR) is a national legal nonprofit organization founded in 1977 and committed to advancing the rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. NCLR is dedicated to protecting and advancing health care, with a particular interest in ensuring that everyone receives the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The National Congress of Black Women represents thousands of low-income women across the country who would benefit from free access to contraception and would be negatively impacted if their health care availability is restricted in any way.

The National Council of Women's Organizations is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The National Gay and Lesbian Task Force (The Task Force) is the oldest national organization advocating for the rights of lesbian, gay, bisexual, and transgender people and their families.

The National Health Care for the Homeless Council is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The National Network to End Domestic Violence (NNEDV) is a not-for-profit organization incorporated in the District of Columbia in 1994 (www.nnedv.org) to end domestic violence. As a network of the 56 state and territorial domestic violence and dual domestic violence sexual assault Coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions women, children, and men victimized by domestic violence. NNEDV was instrumental in promoting Congressional enactment and eventual implementation of the Violence Against Women Acts of 1994, 2000, 2005, and 2013 and, working with federal, state, and local policy makers and domestic violence advocates throughout the nation, NNEDV helps identify and promote policies and best practices to advance victim safety. NNEDV's work on domestic violence, as well as on our HIV/AIDS project, informs our position on sexual and reproductive health matters.

The National Partnership for Women & Families (formerly the Women's Legal Defense Fund) is a national advocacy organization that develops and promotes policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families. Since its founding in 1971, the National Partnership has worked to advance women's health and equal employment opportunities through several means,

including by challenging discriminatory employment practices in the courts.

The North Carolina Justice Center is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The North Dakota Women's Network is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

Northwest Health Law Advocates is committed to protecting and advancing access to health care and women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The National Organization for Women (NOW) Foundation is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. The Foundation maintains a commitment to advancing women's reproductive rights and healthcare, including access to no-cost-sharing contraceptive coverage under the Affordable Care Act. Created in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist activist organization in the United States, with hundreds of thousands of members and contributing supporters with chapters in every state and the District of Columbia.

Planned Parenthood Federation of America is the oldest and largest provider of reproductive health care in the United States, delivering medical services through over 700 health centers operated by 68 affiliates across the United States. Its mission is to provide comprehensive reproductive health care services and education, to provide educational programs relating to reproductive and sexual health, and to advocate for public policies to ensure access to health services, including contraceptive coverage as intended by the Affordable Care Act.

Population Connection is committed to ensuring that every woman and family has access to the full range of contraceptive methods as a preventive service as intended by the Affordable Care Act.

Progressive States Network is committed to protecting and advancing women's health policy in the nation and across the states. We believe that consistent and affordable access to contraception is critical to protecting women's health and the economic security of families. This includes ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

Raising Women's Voices for the Health Care We Need is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The Reproductive Health Technologies Project (RHTP) works to advance the ability of every woman to achieve full reproductive freedom with access to the safest, most effective, and preferred methods for

controlling her fertility and protecting her health. RHTP's long-term goal is to change the political and commercial climate in the United States so women have access to technologies they want to become pregnant when they are ready, end a pregnancy when they are not, and promote their health and wellbeing throughout their reproductive lives.

The **Sargent Shriver National Center on Poverty Law** advocates on behalf of low-income families and individuals, representing them in a wide range of policy and legal matters including housing, employment, public benefits, community and criminal justice, education, health care, and the manner in which these issues especially impact women.

As the only US-based, international membership organization focused on amplifying the voice, presence, and influence of non-religious women, **Secular Woman** is committed to protecting and advancing women's health. We have a particular interest, through our @AbortTheocracy project, in ensuring that women receive access to preventative care including the full range of FDA-approved contraceptives and related education and counseling without cost sharing or discriminatory employer interference, as intended by the Affordable Care Act.

The **Service Employees International Union (SEIU)** is a labor organization representing approximately two million working men and women. As the nation's largest healthcare union, with more than half of its members working as healthcare providers, SEIU is deeply committed to ensuring that all working people, men and women alike, have access to affordable healthcare, including contraceptive coverage, as intended by the Affordable Care Act.

The Sexuality Information and Education Council of the U.S. is committed to the right of all people to accurate information, comprehensive sexuality education, and sexual health services and therefore supports the protection and advancement of women's health, ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The Southwest Women's Law Center is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

UniteWomen.org ACTION is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

WV FREE is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The Wisconsin Alliance for Women's Health is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The Women Donors Network (WDN) is committed to protecting the rights and access to affordable and preventive women's healthcare, with a particular interest in ensuring that women receive the full

benefits of no-cost-sharing contraceptive coverage as intended by the Affordable Care Act. WDN supports reproductive health, rights, and justice solutions that enable all women to make important life decisions for themselves and their families.

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Women Employed promotes fair employment practices and helps increase access to training and education. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts. Women Employed is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The **Women's Bar Association of the District of Columbia** is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act

The **Women's Business Development Center** is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The **Women's Institute for Freedom of the Press** seeks women's full rights, and we believe this

includes access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.

The **Women's Law Center of Maryland, Inc.** is a nonprofit membership organization established in 1971 with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, sexual harassment, employment law, family law, and reproductive justice. Through its direct services and advocacy the Women's Law Center seeks to protect women's legal rights and ensure equal access to remedies and benefits, including access to no-cost sharing contraceptive coverage as intended by the Affordable Care Act.

Founded in 1974, the **Women's Law Project (WLP)** is a Pennsylvania-based nonprofit women's legal advocacy organization providing legal representation, public education, and advocacy on a wide range of legal issues related to women's health, well-being, and equality. Because access to the full range of reproductive health care is necessary to protect women's health and critical to women's ability to participate on an equal basis in civic and professional endeavors, WLP has made expanding access to contraceptive care in Pennsylvania a high priority. WLP has represented employees denied equitable health insurance coverage of contraceptive care and prescriptions; has advocated for improved contraceptive coverage for survivors of sexual assault; and has conducted extensive investigations of the availability of emergency contraception in Pennsylvania hospitals and pharmacies.

WOMEN'S WAY is a powerful voice for women and girls: creating an equitable, just, and safe future for all communities in the Greater Philadelphia region. WOMEN'S WAY is committed to protecting

and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to no-cost-sharing contraceptive coverage as intended by the Affordable Care Act.